

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LIEFF, CABRASER, HEIMANN & NO C 10-0013 VRW
BERNSTEIN, LLP,

Plaintiff, **ORDER**

V

UNITED STATES DEPARTMENT OF
JUSTICE, ANTITRUST DIVISION,

Defendant.

The above-captioned Freedom of Information Act ("FOIA") action is a product of a consolidated multi-district litigation entitled In re Optical Disk Drive Products Antitrust Litigation, M:10-2143 VRW ("ODD"). The individual actions making up the ODD case were filed in the wake of public disclosures of an ongoing United States Department of Justice, Antitrust Division ("DOJ") investigation into possible violations of antitrust law in the ODD industry ("criminal investigation"). Doc #16 at 10. Plaintiff in this FOIA case, Lieff, Cabraser, Heimann & Bernstein, LLP

1 ("Lieff"), apparently in preparation of an anticipated Twombly
2 motion to dismiss in the civil ODD action, has requested, via the
3 Freedom of Information Act, 5 USC § 552, that DOJ produce subpoenas
4 the DOJ issued to entities that manufacture and sell optical disk
5 drives as part of the criminal investigation. See Bell Atlantic
6 Corp v Twombly, 550 US 554 (2007). The DOJ refuses to produce any
7 subpoenas, arguing that — to the extent subpoenas responsive to
8 Lieff's FOIA request exist — responsive subpoenas would be grand
9 jury subpoenas; which, in the DOJ's view, fall squarely within
10 several FOIA exemptions.

11 Lieff and DOJ filed cross-motions for summary judgment on
12 April 29, 2010. Docs #14 & 16. The matter is currently scheduled
13 for argument on August 12, 2010. Doc #25.

14 The court deems it prudent to continue the August 12
15 hearing subject to the civil discovery calendar in the ODD case.
16 The clerk is DIRECTED to terminate the parties' cross-motions for
17 judgment administratively. Doc #14 & 16. The parties may re-
18 notice their motions for hearing when the relevant consolidated
19 complaint is at issue in the ODD matter.

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IT IS SO ORDERED.

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VAUGHN R WALKER
United States District Chief Judge

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